

ATTACHMENT 1

CAPITAL ONE PROFFERS

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CAPITAL ONE PROFFERS

RZ 2010-PR-021

PCA 92-P-001-08

June 28, 18, 2012

Pursuant to Section 15.2-2303 (A), Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner and applicant for themselves and their successors and/or assigns (collectively referred to as the "Applicant") in this Rezoning application ("RZ") and Proffer Condition Amendment application ("PCA") proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 29-4 ((5)) Parcel A2 (the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application RZ 2010-PR-021 and the companion application PCA 92-P-001-08 (collectively, the "Application") are granted by the Board of Supervisors. In the event that the application is denied, these Proffers shall be immediately null and void and of no further force or effect on the Property.

GENERAL

1. Conceptual Development Plan. The Property shall be developed in substantial conformance with the proffered elements of the Conceptual Development Plan dated August 4, 2010, and revised through June 13, 2012, prepared by William H. Gordon & Associates and consisting of 34 sheets (the "CDP"). In addition to the specific Proffers contained herein, the proffered elements of the CDP shall be limited to the grid of streets, general location of access points to buildings, general location of the buildings, mix of uses, minimum and maximum building heights, the amount and general location of urban park land, and general quality and character of the streetscape (the "Proffered Elements"). Other elements of the CDP may be adjusted or modified with approval of future Final Development Plans ("FDP") in accordance with the provisions set forth in Section 16-402 of the Fairfax County Zoning Ordinance (the "Ordinance"), and these Proffers.
2. Minor Modifications. Minor modifications to the Proffered Elements of the CDP may be permitted pursuant to Par. 4 of Section 16-403 of the Ordinance when necessitated by sound engineering or when necessary as part of final site design, and when such modifications are determined to be in substantial conformance with the Proffered Elements and these Proffers, as determined by the Zoning Administrator.
3. Future Applications. Any portion of the Property may be the subject of a Conceptual Development Plan, Conceptual Development Plan Amendment, Final Development Plan, Final Development Plan Amendment, Proffered Condition Amendment, Rezoning, Special Exception, Special Permit, Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Section 18-204 paragraph 5 of the Zoning Ordinance. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property which are not the subject of such an application shall remain in full force and effect.

PROPOSED DEVELOPMENT

4. Existing Development. The Property is approximately 26.21 acres in size and is developed with the existing Capital One corporate headquarters building, which contains approximately 479,500 square feet (excluding basement space) (the "Capital One Headquarters"), the 24,500 square-foot conference facility (the "Conference Facility"), a structured parking facility containing approximately 1,529 spaces (the "Existing Parking Garage"), temporary athletic fields and sport courts (the "Temporary Athletic Facilities"), and 35 surface parking spaces (the "Existing Surface Parking") (collectively, the "Existing Development"). The Existing Development is shown on Sheet 4 of the CDP and may remain in operation indefinitely. In the event that only a portion of the Property is redeveloped subject to an approved FDP and site plan, the portion or portions of the Property not subject to the FDP, including the Existing Development, may continue in operation as shown on Sheet 4 of the CDP. The Applicant may also make minor modifications to the Existing Development as depicted on Sheet 4 of the CDP, such as to permit changes to the Temporary Athletic Facilities and to accommodate the future Jones Branch Connector improvements, subject to the approval of the Zoning Administrator. Any use which is permitted in the PTC district may also be permitted as an interim use subject to the Use Limitations in Section 6-505 of the Ordinance.

- A. Interior Improvements. For those buildings or structures existing on the Property as of the approval date of this Application, the Applicant may secure building permits for and make interior improvements to such buildings without triggering the requirement to reconstruct such buildings in conformance with the CDP or any approved FDP.
- B. Casualty. The Applicant may restore any building or structure existing as of the approval date of this Application that later is destroyed or damaged by casualty, subject to Article 15 of the Zoning Ordinance.
- C. Parking. The Existing Parking Garage may remain in operation and will continue to serve the Existing Development until and unless an FDP and site plan are approved showing its removal.

5. Density Credit. In addition to the 26.21-acre Property, the Applicant is utilizing previously reserved density credit for land dedications totaling approximately 3.01 acres, as illustrated by the building tabulations on Sheet 3 of the CDP.

6. Proposed Development. The development on the Property will supplement and partially replace the Existing Development, as more particularly described in the proposed phasing plan described below (collectively, the "Proposed Development"). The Proposed Development, which includes the Existing Development, shall not exceed 4,969,523 square feet of total GFA, which shall include a minimum of 800 dwelling units and up to 3,182,153 square feet of GFA of office space.

7. Phasing Plan. The Proposed Development will occur in phases as further described below (the "Phasing Plan"). The buildings, plazas, uses and other improvements shown on the

CDP shall be constructed in accordance with the phasing outlined in Paragraphs A – E of this Proffer and as more specifically described on Sheets 14 – 15 of the CDP. Each phase shall include the ultimate streetscape dimensions and design as depicted on the CDP in order to establish the important pedestrian elements identified in the Comprehensive Plan. With the submission of each FDP, the Phasing Plan will be updated to provide additional details, including providing existing structures and facilities, the anticipated order of future development, the completion of the street grid, establishment of streetscapes and pedestrian elements, construction of parks, and updated interim conditions.

A. Capital One Headquarters Expansion Phase (Block A).

Phase Summary	GFA Range (sf)	Min./Max. Heights	Max. Parking
Building 1 – Commercial-Office	300,000 – 519,000 SF	150-281 feet	1,335
Building 1 – Retail	up to 8,500 SF	---	40
Building 2 – Hotel	50,000 – 81,500 SF	75-111 feet	135
Building 2 – Retail	up to 10,500 SF	---	28
Maximum for Phase	619,500 SF	---	1,538

B. Hotel/Civic Plaza Phase (Block B).

Phase Summary	GFA Range	Min./Max. Heights	Max. Parking
Building 3 – Commercial-Office	200,000 – 292,500 SF	150 – 225 feet	647
Building 3 – Civic	up to 30,000 SF	---	30
Building 4 – Hotel/Conference	200,000 – 367,500 SF	150 – 293 feet	614
Building 4 – Retail	up to 2,300 SF	---	8
Building 5 – Commercial-Office	300,000 – 396,500 SF	125 – 200 feet	878
Building 5 – Retail	up to 10,350 SF	---	37
Maximum for Phase	1,099,150 SF	---	2,214

C. Residential Commons Phase (Block C).

Phase Summary	GFA Range	Min./Max. Heights	Max. Parking
Building 6 – Residential	300,000 – 518,000 SF	150 – 221 feet	498
Building 6 – Retail	up to 26,300 SF	---	0
Building 7 – Residential	200,000 – 274,800 SF	125 – 221 feet	254
Building 7 – Retail	up to 5,000 SF	---	0
Building 8 – Residential	200,000 – 386,900 SF	125 – 231 feet	372
Building 8 – Retail	up to 12,500 SF	---	0
Maximum for Phase	1,223,500 SF	---	1,124

D. Metro Station Phase (Block D).

Phase Summary	GFA Range	Min./Max. Heights	Max. Parking
Building 9 – Residential	50,000 – 124,250 SF	75 – 175 feet	236
Building 9 – Retail	up to 3,850 SF	---	19
Building 10 – Commercial Ofc. <u>Office</u>	400,000 – 484,000 SF	200 – 305 feet	742
Building 10 – Retail	up to 28,100 SF	---	142
Maximum for Phase	640,200 SF	---	1,139

E. Financial Office Phase (Block E).

Phase Summary	Max. GFA	Min./Max. Heights	Max. Parking
Building 11 – Commercial Ofc. <u>Office</u>	200,000 – 329,850 SF	150 – 266 feet	296
Building 11 – Retail	up to 6,650 SF	---	11
Building 12 – Commercial Ofc. <u>Office</u>	400,000 – 786,000 SF	300 – 395 feet	1,344
Maximum for Phase	1,122,500 SF	---	1,651

8. Final Development Plans. FDPs for individual building sites or phases shall establish the minimum and maximum GFA for each building that is constructed within the limits of the Phasing Plan set forth in Proffer 7 above. In addition, the following information shall be provided on each FDP, for review and approval of the Planning Commission:

- A. Tabulations. A tabulation indicating the development status of all property subject to the Proposed Development shall be provided with each FDP and site plan submitted for the Property. The tabulation shall include a listing of all existing and proposed buildings and facilities, along with the GFA and uses approved on the CDP, FDP and site plan as may be applicable. The tabulation shall be updated with each subsequent FDP and site plan submitted for the Property.
- B. Building Heights. Concurrent with the submission of an FDP for any portion of the Proposed Development that includes Buildings 10, 11 or 12, the Applicant shall submit the plans to the Providence District Supervisor's office for review and comment of the proposed maximum height for the building(s).
- C. Public Facility. Until the Public Facility as set forth in Proffer 13 has been constructed, each FDP shall contain proposed phasing information for the Public Facility.
- D. Architecture. The specific architectural design information as described in Proffer 15. In addition, architectural design elevations shall be presented with

each FDP for the purpose of illustrating the general character of building massing, scale, façade articulation, general building envelope and fenestration treatment, materiality and material quality of the proposed FDP development, as well as the porosity, materiality, and entry locations at the ground floor of each building. Other details of building design (such as specific material or color selections, fenestration details, etc.) are subject to change in final architectural and site plans.

- E. Build-to Lines. Proposed Build-to Lines, including any proposed modifications to the Build-to Lines and/or the expanded streetscape areas as identified in Proffer 16.
- F. Conceptual Utility Plans. The Conceptual Utility Plans more specifically described in Proffer 18, including any anticipated conflict points between utility easements and proposed street trees and how these conflicts are proposed to be resolved prior to site plan approval.
- G. Lighting. Specific streetscape lights per Proffer 20.
- H. Noise Attenuation. A Noise Study and any proposed noise attenuation measures, as described in Proffer 23.
- I. Surface Parallel Parking Spaces. The final number and location of on-street parallel parking spaces to be constructed within the applicable FDP area, in accordance with Proffer 26.
- J. Landscape Plan. A revised Landscape Plan as described in Proffer 28.
- K. Streetscape. The details and any adjustments to the streetscapes as described in Proffer 29, including information regarding sight distance lines at all intersections and entrances included within the FDP.
- L. Interim Conditions and Standards. ~~For each FDP submission that contains multiple buildings that will be constructed in stages, the~~ The Applicant shall provide detailed information on the proposed interim conditions and standards as described in Proffer 30.
- M. Stormwater Management. A detailed stormwater management plan, as described in Proffer 31.
- N. Right-of-Way Dedications. Any refinements to the right-of-way dedications described in Proffers 35 and 36.
- O. Security. A revised security plan as described in Proffer 36(E). As part of the security plans, the Applicant shall also provide a diagram with detailed locations of any bollards and security gates, including precedent images for each feature.
- P. Bicycle Parking. Specific locations for, and the number of, bicycle facilities to be provided as described in Proffer 43.

- Q. Publicly Accessible Parks and Recreational Facilities. The specific details on parks and recreational facilities included within the area of the FDP, as described in Proffers 47, 48 and 50. For the Metro Station Phase, the Residential Commons Phase, and the Hotel/Civic Plaza Phase, the Applicant shall also submit detailed plans with proposed amenities and programmatic elements for the parks and recreational facilities associated with those respective phases.
 - R. Sustainable Energy Practices. The sustainable energy practices described in Proffer 52.
 - S. Sight Distance Lines. Sight distance lines shall be shown for all affected driveway entrances and signs, as necessary.
 - T. Bus Shelters. Details on any proposed bus shelter locations and designs per Proffer 45.
 - U. Functional Analysis. A transportation analysis that evaluates the intersections being constructed or modified as part of each FDP. The analysis will evaluate build out year conditions to determine the forecasted operational characteristics of the intersections.
 - V. Capital One Drive Parking and Loading. With the submission of an FDP for the Residential Commons Phase, the Applicant shall submit a detailed functional analysis for the parking and loading entrances associated with Building 7.
 - W. Old Meadow Road Median. With the submission of an FDP for either the Financial Office Phase or the Metro Station Phase, the Applicant shall propose to construct a median on Old Meadow Road between the intersections of Dolley Madison Boulevard and Old Springhouse Road, subject to approval by VDOT and the Fire Marshal.
9. Owners' Associations.
- A. Umbrella Owners' Association. Prior to the issuance of the first RUP or Non-RUP for the first building constructed with the Proposed Development that is not for the sole use of Capital One Bank and its subsidiaries, affiliates and/or successor companies, the Applicant shall establish an Umbrella Owners' Association (the "UOA"), whose members will consist of a representative of each owner of land and/or buildings within the Property. The UOA shall provide for applicable proffer, maintenance and replacement obligations, including but not limited to implementation of the Transportation Demand Management ("TDM") program, maintenance of private streets, sidewalks, streetscapes, publicly accessible private park areas and athletic facilities, stormwater management facilities not maintained as part of individual buildings, and any private utility systems.
 - B. Homeowners' and Condominium Owners' Associations. For each residential building in which units are held for sale, the Applicant shall cause either a

homeowners' association and/or a condominium owners' association ("HOA/COA"), as applicable, to be formed for that building. Each of these associations shall also be members of the UOA.

- C. Disclosures. UOA and HOA/COA documents (including budgets provided in any offering or sale materials) shall specify the proffer, maintenance and replacement conditions and obligations set forth in these Proffers. Purchasers shall be advised in writing of these proffer conditions and obligations prior to executing a contract of sale.
- D. UOA TDM Obligations. All residents, tenants, owners, employers and employees living, working, operating a business or owning property within the Property shall be advised of their continuing obligation to the TDM Plan described in Proffer 41. All UOA and HOA/COA members shall be informed of any funding obligations for the TDM program prior to executing a contract of sale and all such obligations shall be included in UOA and HOA/COA documents.
- E. UOA Expansion. Nothing in this Proffer shall be construed to prohibit expansion of the UOA to include neighboring properties, at the sole election of the UOA.

10. Mix of Uses. The Property shall consist of a mix of residential, office, retail, service and hotel uses as described in the CDP and these Proffers, subject to the limitation that the maximum square footage of all constructed uses on the Property shall not exceed 4,969,523 square feet of GFA. The Proposed Development may contain any use permitted by-right in the PTC District of the Zoning Ordinance, subject to compliance with any use limitations contained elsewhere in these Proffers. Additional special exception and/or special permit uses may be permitted without a Proffer Condition Amendment, provided they are in substantial conformance with the CDP and these Proffers.

11. Retail and Personal Service Districts. Subject to FDP approval, the areas provided on the CDP that are designated for retail and personal service uses may include any non-residential uses permitted in the PTC district or uses accessory to the primary use.

12. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty (60) days prior to recording residential condominium documents for any portion of the Property located within the Phase I Dulles Rail Transportation Improvement District (the "Phase I District"), the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Fairfax County Board of Supervisors.

PUBLIC FACILITIES

13. Public Facility. The Applicant shall design and construct a 30,000 square-foot space within a future building to be used by Fairfax County for community and/or recreational programs (the "Public Facility"). The Applicant has identified to Fairfax County and reserved

space in Building 3 for the Public Facility. The Public Facility shall be constructed concurrently with Building 3 (unless modified in accordance with Proffer 13H below) and shall be accessible through a separate entrance with ADA accessibility.

- A. Design and Scope. The Applicant shall design the Public Facility to include a gymnasium of approximately 9,000 square feet, and may contain, among other things, space for offices, meeting rooms, an exercise room, a game room, an arts/crafts room, a computer room, a multipurpose meeting room or rooms, a kitchen, restrooms, locker and storage space, and other related amenities. The Applicant shall design the interior of the Public Facility pursuant to the Fairfax County Guidelines for Architects and Engineers prepared by DPWES and dated September 2008 (the "Guidelines"), as amended, and such that the Public Facility is designed to be consistent with the quality of other reasonably comparable County facilities of similar use. All design documents are subject to County review and approval at each design phase as provided herein.
- B. Total Construction Cost. The total construction cost to the Applicant of the Public Facility shall not exceed the sum of \$11,500,000.00, as adjusted on an annual basis by the Marshall & Swift Building Cost Index, with any adjustment beginning two (2) years from the date of approval of the Application to the date that a Non-RUP is issued for the Public Facility (the "Total Construction Cost"). For the purposes of this Proffer 13, Total Construction Cost of the Public Facility shall include hard construction costs of the Public Facility and the surrounding landscape and hardscape for the relevant building, design, special consultant services, permitting, construction administration services, quality control inspections, required Special Inspections Program inspections, independent cost estimating, utility connections and/or relocations and new services, and all other costs related thereto. For those costs that are not unique to the Public Facility but are attributable to the construction of the building itself, the Applicant shall include in the Total Construction Cost the pro rata share of the expense attributable to the Public Facility, as measured by the fraction of Public Facility as compared to the overall rentable square feet in the remainder of the building. The Applicant will allocate a minimum of 30 parking spaces for the Public Facility, and Total Construction Cost will include the pro rata share of these parking spaces as a ratio of the entire cost of constructing the associated parking deck. Total Construction Cost will also include the cost of any ancillary space to be used solely for the Public Facility, such as space for separate generators, stormwater management vaults, or ventilation systems. Total Construction Cost of the Public Facility shall not include clearing and grading, earthwork, costs to bring utilities to the building, costs associated with site-related LID facilities, landscaping and hardscaping of areas not associated with the Public Facility, and costs for easement preparation and recordation, all of which the Applicant shall bear. The Total Construction Cost shall include the building shell and fully finished interior for the Public Facility, to include ceilings, lighting, plumbing, heating and cooling (HVAC), unpainted interior walls, electrical outlets, elevators, rest rooms, and all finishes, to include the gymnasium floor, any required bleachers, and basketball hoops. The Total Construction Cost shall

generally not include fixtures, furnishings, or equipment (except for those specified), which the Applicant shall not provide.

- C. Design and Review Process. The Applicant shall coordinate preparation of the design of and budget for the Public Facility with the Facilities Management Building Construction and Design Division of DPWES ("FMD") and other applicable agencies of Fairfax County, with FMDDPWES as the point of contact with responsibility for coordinating with other County agencies. Prior to such preparation of design and budget, the Applicant shall hold a pre-design conference with FMDDPWES to discuss scope and design parameters for the Public Facility. The Applicant shall submit design and budget documents to FMDDPWES for County review and approval consistent with the Guidelines and the provisions of this Proffer at the following points: Schematic Design (35%), Design Development (65%), 80% Construction Documents, and 100% Construction Documents. The Applicant shall address and, as applicable, incorporate all County review comments at each design phase, and shall provide a statement of probable construction cost prepared by a mutually agreed-upon independent, professional construction cost estimator at each design phase. Prior to the submission of the Schematic Design drawings, the Applicant shall convene a meeting with FMDDPWES to set a commercially reasonable schedule and process for review and comment on the submission sets of drawings and budget. The Applicant shall respond to all County plan review comments in writing, and shall incorporate such comments in the next design phase plan submission. Following Fairfax County approval of the 80% Construction Documents, no further design changes shall be made to the Public Facility except as may be required to adjust the scope of the Public Facility as provided herein. In the event of any disagreement between the Applicant and FMDDPWES as to whether the design of and/or budget for the Public Facility is proceeding consistent with the Guidelines and/or the provisions of this Proffer, such issue shall be addressed by proffer interpretation request to the Zoning Administrator, whose decision may be subject to appeal as outlined in the Zoning Ordinance and the Code of Virginia.
- D. Construction Bids. The Applicant shall submit the Schematic Design documents and detailed construction cost budget for the Public Facility to FMDDPWES prior to or concurrent with the submission of a site plan for the relevant building. Once the 100% Construction Documents and budget for the Public Facility have been approved by FMDDPWES, the Applicant shall then obtain a minimum of three (3) construction bids for the approved design of the Public Facility to ensure that the Total Construction Cost is bid within the Applicant's limit of \$11,500,000.00. Following receipt of the construction bids, the Applicant shall meet with the County to review the construction bids and thereafter provide the County the opportunity to verify the construction bids through an independent source. If the estimated Total Construction Cost exceeds \$11,500,000.00 at any design phase, or if the Applicant cannot obtain a construction bid for the approved design within the Applicant's \$11,500,000.00 limit, then the Applicant shall consent to one of the following remedies, at the County's sole election:

- i. Adjust the scope of the project so that it can be bid within the \$11,500,000.00 limit, which adjustment in scope shall not require a PCA;
- ii. Accept additional funding from the County as needed to fully fund the Total Construction Cost for the Public Facility;
- iii. In lieu of any further design and/or construction requirement for the Public Facility, the Applicant shall contribute to the County the sum of \$9,000,000.00, less all permissible documented costs incurred by the Applicant up to such time in furtherance of the design and construction of the Public Facility. In the event this option is selected, the Applicant shall contribute the total amount due to the County on a per-square-foot basis at the time of site plan approval for each building on the Property (excluding the square footage attributable to the Existing Development). For those portions of the Proposed Development that may already have been constructed at the time this option is selected, the Applicant shall contribute the required amount in a lump sum prior to site plan approval for the next building associated with the Proposed Development.

In the event the County does not select from the three remedies within 180 days of formal notification that the bid exceeds the limits of the Total Construction Cost, the Applicant may unilaterally select to proceed with the option defined in Proffer 13D(iii).

- E. Contingency Fund. Once the Applicant has an acceptable construction bid in place as provided herein, the Applicant shall be responsible for a construction contingency of \$500,000.00 to cover, to the extent of the contingency, change orders related only to design document ambiguities, errors, omissions or unforeseen construction conditions that could not have been reasonably foreseen through the due diligence of the contractor or subcontractors. In no event shall this construction contingency fund be allocated to augment the approved design and/or budget of the Public Facility.
- F. Permitting and Construction. Following receipt of a construction bid within the \$11,500,000.00 limit (or such higher amount as may result from the County allocating additional funds), the Applicant shall diligently proceed to obtain site plan and building permit approvals for the Public Facility. Following approval of the necessary permits for the Public Facility, the Applicant shall diligently proceed to construct the Public Facility as approved.
- G. Dedication. Following issuance of the Non-RUP for the Public Facility, the Applicant shall dedicate, convey, or lease the Public Facility in a manner acceptable to Fairfax County. The Public Facility shall be dedicated "as is, where is," and concurrent with such dedication, the Applicant shall also assign to Fairfax County all of the Applicant's warranty rights under construction contracts and engineering and design contracts for the Public Facility to which the Applicant is a party; provided, however, that Fairfax County, concurrently therewith, agrees to

release the Applicant from all liability for any of the work done related to the Public Facility. The Applicant may elect to record a deed restriction prior to dedication or conveyance limiting the use of the Public Facility for public and/or recreational uses. The deed restriction may prohibit use of the Public Facility as a commercial office, retail use, fire station, permanent shelter or residential facility, or any other use other than the specific uses for which the Public Facility is being provided. Such dedication shall occur prior to bond release for the relevant phase.

- H. Changes to Location. The Applicant shall coordinate with the Providence District Supervisor and Planning Commissioner at the time of each FDP submission to determine whether the Public Facility, as defined in this Proffer 13, should remain in Building 3 or should be moved to another office building on the Property.

URBAN DESIGN GUIDELINES

14. Capital One Design Guidelines. In order to provide for the implementation of Tysons Corner Urban Design Guidelines and the concepts which further the design commitments provided throughout these Proffers and in the CDP, the applicant has submitted The Capital One Urban Design Guidelines dated April 2012, which are included by reference as Exhibit A. The CDP, which includes elements from the Capital One Design Guidelines, provides a base line of urban design elements that shall be utilized to implement the urban design vision for this neighborhood. All FDPs submitted shall be in substantial conformance with the Tysons Corner Design Guidelines and the urban design components of the CDP as determined by the Zoning Administrator, in consultation with OCR. In any instance of inconsistency between the Capital One Design Guidelines and the approved CDP/FDP and/or Proffers, the CDP/FDP and any related proffers shall govern.

BUILDING ARCHITECTURE

15. Architecture. Buildings shall be designed with high quality architecture and building materials. The exterior building materials used in the development of the new residential, office and hotel buildings shall consist of glass, steel, brick masonry, architectural pre-cast, stone masonry, architectural concrete and/or other materials of similar quality that are typically used on the exterior of Class A office buildings and residential and hotel buildings of a similar quality. No Exterior Insulation and Finish Systems (EIFS) shall be utilized on any of the new proposed residential, office or hotel buildings. Each FDP shall provide specific design information on building materials, architectural massing and fenestration, and specific features designed to activate the streetscapes as depicted on the CDP. Modifications may be made to the building architecture shown in an approved FDP subject to review and approval by the Zoning Administrator to establish consistency with the CDP and FDP. A minimum of ten percent (10%) of all residential dwelling units shall be designed and constructed with some Universal Design features. These elements shall be identified at the time of building plan submission.

At the time of site plan submission for each building, the Applicant shall study whether bird-friendly design strategies may be employed to reduce bird injury and death due to in-flight collisions with building and/or building elements. The strategies to be studied should make the building visible to birds in flight and reduce reflections that distract or confuse birds though the

use of appropriate glazing treatments or architectural elements, including using color, texture, opacity, patterns, louvers, screens, or ultraviolet materials that are visible to birds. In addition, the Applicant shall study whether interior lighting should be reduced and direct lighting which is visible from the exterior should be eliminated to reduce a building's attractiveness to birds flying at night. The Applicant shall describe the results of its studies of bird-friendly design strategies, and to what extent any of the strategies will be implemented, in a narrative at the time of building permit issuance. To the extent strategies are identified but not implemented, the narrative shall describe the reason(s) for the exclusion of such strategies.

16. Build-to Lines. Build-to Lines have been established as depicted on Sheet 5 of the CDP to create an urban, pedestrian-oriented environment where buildings are located close to the street and pedestrian areas are located between buildings and streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the Build-to Lines shall be permitted, provided such modifications are in general conformance with the CDP, as determined by the Zoning Administrator, and are shown on an approved FDP. Awnings and other architectural canopies attached to building frontages that project out from the Build-to Lines shall not extend beyond the building zone, shall provide adequate clearance for pedestrian movement and shall not conflict with street tree locations. At the time of FDP approval, the Applicant shall identify possible locations at the street level for expanded areas for outdoor dining adjacent to restaurants and cafes, and shall provide appropriate building zones for such uses in keeping with the Comprehensive Plan recommendations.

17. Building Heights. The minimum and maximum heights of the proposed buildings shall be in substantial conformance with the building heights indicated in Proffer 7. This height limit does not include penthouses, elevators or mechanical equipment rooms pursuant to Section 2-506 of the Zoning Ordinance. Penthouse structures shall be architecturally integrated with the building and shall not exceed 25 feet in height for buildings that are 200 feet in height or less, or 35 feet for buildings that exceed 200 feet in height. The Applicant shall screen mechanical equipment located on the rooftops of the proposed buildings from ground level view, using opaque parapet walls and other screening walls, materials or devices.

18. Utility Locations. The locations of underground utilities including, but not limited to, water, sanitary sewer and storm sewer utility lines shall be installed within the street network to the maximum extent feasible as determined by DPWES or shall be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP.

A. Conceptual Utility Master Plan. A conceptual utility master plan (the "Conceptual Utility Master Plan") overlaid on a landscape plan is provided on Sheet 32 of the CDP and includes general locations for all stormwater cisterns and vaults, electrical vaults, storm sewer lines, sanitary sewer lines, and conceptual locations for other utilities. Adjustments to the type and location of utilities shall be permitted at the time of FDP approval to avoid conflicts with street trees, utilities and other site engineering considerations.

B. Conceptual Utility Plans. Conceptual utility plans (each a "Conceptual Utility Plan") overlaid on a landscape plan will be provided with each FDP submission

and will refine the general locations for all utilities included in the Conceptual Utility Master Plan, which shall be located in a manner that minimizes conflicts with trees.

- C. Conflicts. If there is no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP, and as determined by the Urban Forestry Management Division of DPWES ("UFMD").
 - D. Access Points. Maintenance access points to stormwater management facilities and electric vaults beneath the streetscape shall be located outside the pedestrian walkway zone to the extent feasible, and shall be shown on the Conceptual Utility Plans submitted with each FDP. For access points located in the walkway zone, a removable panel or access manhole shall be employed utilizing similar paving materials as the surrounding streetscape, provided it does not impact ADA accessibility and is flush with the surrounding walkway. No part of this Proffer shall preclude the Applicant from incorporating venting mechanisms into the removable panel if such mechanisms are required by the applicable utility.
19. Telecommunications Equipment. Telecommunications equipment may be placed on the rooftops of proposed buildings. Any such facilities shall comply with applicable requirements of the Zoning Ordinance and be screened and/or set back sufficiently from the perimeter of the roof and penthouse such that they are not visible from the surrounding streets. Other screening measures should be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunications screening material and flush-mounted antennas. Telecommunications equipment may also be architecturally integrated into the facades of buildings where necessary to ensure on-street and/or open space coverage.

LIGHTING

20. Lighting. All on-site, outdoor and parking garage lighting levels shall meet or be less than that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance and shall include lighting fixtures consistent with the guidance contained in the Tysons Corner Urban Design Guidelines. All parking lot and building mounted security lighting shall utilize full cut-off fixtures. Wall-washer type lighting shall use fixtures with shielding such that the lamp surface is not directly visible. ~~Streetscape lights shall be chosen from~~ One of the options infor streetscape lights from the Tysons Corner Urban Design Guidelines, or suitable alternatives as approved on an applicable FDP. —, shall be selected and shall remain consistent throughout the Proposed Development. In the event the specific selected streetscape lights are discontinued from production at any time in the future, the Applicant may select an alternate option from the Tysons Corner Urban Design Guidelines.

21. Parking Structure Lighting. The Applicant shall utilize full cut-off, low-intensity or recessed lighting directionally shielded to mitigate the impact on adjacent residences for any lighting along the perimeter of an above-ground parking structure not constructed of solid walls. Such lighting shall comply with the requirements of Article 14 of the Zoning Ordinance.

22. Construction Lighting. During construction, the Applicant shall attempt to reduce glare from OSHA, VOSHA, VUSBA and local ordinance required superstructure lighting to the extent possible without violating aforementioned laws, regulations or policies. Construction Lighting. During construction of Buildings 1, 10, 11 and 12 (all office buildings located along the southern end of the site and closest to the existing Regency & Encore Condominium buildings), the Applicant's general contractor will implement night and construction light mitigation measures such as providing appropriate light/bulb shielding along the southern and Route 123 sides of these four office buildings. The Applicant will also explore utilization of timer and/or motion sensors during the construction of these four office buildings so that its temporary construction lighting might be turned off or reduced in intensity during non-working periods. In implementing this proffer, the Applicant and its contractors shall comply with all governing federal, state and/or local health and safety requirements and standards, such as those specific night lighting standards as may be required by Fairfax County, the U.S. Occupational Safety and Health Administration ("OSHA"), and Virginia Occupational Safety and Health ("VOSH").

NOISE ATTENUATION

23. Noise Attenuation. The Applicant shall reduce interior noise to a level of no more than 50 dBA for office and 45 dBA for residential, hotel, child care and other noise sensitive uses as defined by the Comprehensive Plan. In addition, the Applicant shall reduce exterior noise to a level of no more than 65 dBA. At the time of submission of each FDP, the Applicant shall submit a noise study addressing the buildings and outdoor recreation areas shown on the FDP (each a "Noise Study") to DPZ and DPWES for review and approval. Each Noise Study shall indicate the traffic and transit-related noise anticipated from the Capital Beltway and Dolley Madison Boulevard, to include the transit-related noise due to the Tysons East station. Each Noise Study shall include projected noise levels in the residential units, hotel rooms, and outdoor recreation areas shown on the submitted FDP and will be based on final site topography and conditions shown on the site plan, as opposed to existing topography and conditions. The following information shall be included in each Noise Study: the affected buildings, the affected outdoor recreation areas, the affected residential units and hotel rooms, and the noise attenuation measures to ensure that the affected indoor and outdoor areas meet the applicable standards for Noise Sensitive Uses in the Policy Plan in place for the Tysons Corner Urban Center. Noise attenuation measures to be used shall be included in each FDP submission.

A copy of each applicable approved Noise Study shall be included with the submission of the building plans for the construction of each building on the Property. The building plans shall identify the affected occupied spaces and the noise attenuation measures, including materials, to be provided to ensure that each affected occupied space meets the standards outlined below. Supporting information that documents that the proposed noise attenuation measures will be sufficient to attain the interior noise standards shall also be provided. The Applicant shall not obtain building permits until such time as DPZ and DPWES have approved the applicable Noise Study and the noise attenuation measures for each affected occupied space.

24. Noise Attenuation Standards. Each Noise Study shall be conducted using the approved standards for noise attenuation that are in place for the Tysons Corner Urban Center at the time of each applicable FDP.

PARKING

25. Parking. Parking on the Property shall be provided in accordance with the parking requirements for the PTC District set forth in Section 6-509 and Article 11 of the Ordinance. The exact number and location of spaces provided in each phase shall be refined with the approval of each FDP and shall be determined at the time of site plan approval based on the specific uses in each phase. The Applicant may reduce parking as part of the approval of each FDP, subject to the minimums contained in the Ordinance. If changes to the mix of uses at the time of site plan approval result in parking greater than that anticipated on the CDP, additional parking spaces may be provided to the extent they can be accommodated without increasing the height or mass of the parking structures shown on the CDP and refined as part of the FDP. Updated parking tabulations for the Property shall be provided with each FDP and site plan for the Property. Parking shall generally be located in close proximity to the respective uses and may have controlled access. At its sole option, the Applicant may elect to charge for parking within some or all of the parking decks, and on the portions of the street network that are privately owned.

The Applicant shall provide controlled access to residential parking garages and shall ensure that the control equipment is capable of counting vehicles entering and exiting all residential garages. The sale or lease rates of individual parking spaces shall be “unbundled” from the sale or lease rates of individual dwelling units, meaning that a dwelling unit’s purchase price or lease rate shall be exclusive of parking costs.

26. Surface Parallel Parking Spaces. The Applicant shall provide parallel surface parking spaces along the streets in the Proposed Development, as generally shown on the CDP. The final number and location of spaces shall be determined upon FDP approval for each phase of development. The Applicant reserves the right to restrict use of the parallel spaces provided along its private streets by posting appropriate signage or such other means as the Applicant determines appropriate for parallel surface spaces that are not required to satisfy the parking requirements for use as temporary or short term parking, car-sharing parking and/or similar uses. The Applicant shall maintain in good repair, and remove snow from, any surface parallel parking spaces on private streets.

SIGNAGE

27. Signage.

A. Advertising/Commercial Signage. The Applicant shall provide signage as permitted by Article 12 of the Zoning Ordinance, or as approved through a Comprehensive Sign Plan (“CSP”), at which time signage will be governed by such approval. The existing approved CSP for the Property shall remain in effect until and unless it is supplanted by a new CSP.

B. Wayfinding Signage. The Applicant shall provide wayfinding signage through an applicable CSP. Wayfinding signage and elements shall be coordinated with the Tysons Partnership (or successor organization) to facilitate a consistent wayfinding and signage system throughout Tysons and/or the subdistrict.

Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public facilities/amenities. The placement of traffic control signage on public streets shall be coordinated with VDOT.

- C. Off-site Signage. As part of any future CSP, the Applicant reserves the right to seek approval for off-site signage, in accordance with Par. 2 of Sect. 12-210 of the Ordinance.

LANDSCAPING AND STREETSCAPES

28. Conceptual Landscape Plan. Sheet 9 of the CDP includes a conceptual landscape plan for the Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas including courtyards and private amenity areas (the "Conceptual Landscape Plan"). As part of each FDP submission, more detailed landscape plans for each building phase shall be provided in general conformance with the Conceptual Landscape Plan, with adjustments permitted so long as the quantity and quality of the landscaping provided and the function of the space remains consistent with the Conceptual Landscape Plan, as determined by the Planning Commission during FDP review. As part of the site plan submission for each building phase, the Applicant shall submit to the Urban Forestry Management Division ("UFMD") of DPWES for review and approval a detailed landscape plan (each a "Final Landscape Plan") that is in substantial conformance with the quantity and quality of plantings and landscaping materials shown on the approved FDP, and shall include, among other things, irrigation information (if applicable), design details for tree wells and other similar planting areas on structures and along streets. These details shall include the composition of planting materials, methods for providing suspended pavement over tree root zones to prevent soil compaction, and methods for ensuring the viability of plantings on structures.

29. Streetscapes. Streetscapes shall be installed throughout the Property as conceptually illustrated on Sheets 12 and 12A of the CDP. Streetscape elements shall include a landscaped amenity panel located immediately behind the face of curb, a clear pedestrian sidewalk adjacent to the landscape amenity panel, and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses, storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to retail and service uses. Streetscape elements may be adjusted at the time of FDP approval, provided the quality and dimensions of the streetscape ~~is~~are consistent with that shown on the CDP.

- A. Street Trees. Tree planting sites are set forth on the CDP, subject to revision as may be approved on the FDP or at site plan review by UFMD. Where minimum planting widths of 8 feet cannot be provided, structural cell technology, or other measures acceptable to UFMD, shall be used to satisfy the following specifications for all planting sites:

- i. A minimum of 4 feet open surface width and 16 square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area;

- ii. A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below pavement), with no barrier to root growth within four feet of the base of the tree;
 - iii. Soil volume for Category III and Category IV trees (as defined in Table 12.19 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet where paving above root zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume. For two trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area. Greater soil volumes are encouraged in areas of lower pedestrian volume;
 - iv. Soil specifications in planting sites shall be provided in the planting notes to be included in all site plan submissions;
 - v. All shade trees shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting;
 - vi. Tree zones may be installed with a fully automatic, drip irrigation system; and
 - vii. It is expected that street trees will have to be planted within existing utility easements, and the Applicant shall replace any street trees that are removed to facilitate repairs of utilities in these easements.
- B. Non-Invasive Plant Materials. Invasive species, as defined by the Fairfax County PFM, shall not be used on the Property.
- C. Sight Distance Considerations. Sight distances and anticipated road design speeds shall be depicted on the Landscape Plan submitted with each applicable FDP to demonstrate that the locations of all proposed street trees are viable. If determined at the time of site plan review that street tree locations conflict with sight distance requirements, the Applicant shall investigate whether limited pruning or minor adjustments to the locations of street trees will alleviate sight distance concerns. In the event VDOT does not approve the tree locations even after the changes anticipated above, the Applicant shall be permitted to relocate the affected street tree without the need for confirmation from DPZ, subject to approval by UFMD. If the deleted street tree(s) result in a tree canopy below 10% on the Property, the street tree(s) must be accommodated in another location on the Property, as approved by DPZ in consultation with UFMD.

- D. Streetscape Furnishings, Materials and Lighting. Unified and high quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. A Streetscape Furnishing and Materials Plan shall be provided as part of all FDPs. These plans shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb, and in other public realm open spaces. Materials, furnishings, and lighting shall be compatible with the Capital One Design Guidelines and the Tysons Corner Urban Design Guidelines.
- E. Maintenance. The Applicant shall maintain in good repair and replace in kind, as needed, all pedestrian realm elements within the Proposed Development, to include any maintenance required to maintain ADA compliance. The pedestrian realm includes any public areas and all private spaces with public access easements and shall include all areas between the curb and the building facade. For any public areas, the Applicant shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other applicable public entity) to permit the Applicant to perform such maintenance. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant without the requirement for a PCA. Maintenance commitments shall include but are not limited to:
- i. All plantings including trees, shrubs, perennials, and annuals;
 - ii. All associated irrigation elements;
 - iii. All hard surfaces, including but not limited to paving and retaining walls;
 - iv. All streetscape furnishings including benches and bike racks;
 - v. All lighting fixtures;
 - vi. All special drainage features, such as Low Impact Development facilities;
 - vii. Snow removal;
 - viii. Trash recycling and litter removal;
 - ix. Leaf removal;
 - x. Any sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes that are not VDOT standard devices; and
 - xi. All urban park amenities in the development including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving,

and art, with the exception of any urban park amenities that are transferred to FCPA.

As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development, the Applicant shall provide interim streetscape improvements as described in Proffer 30.

F. Ownership. Portions of the streetscapes will be dedicated in fee simple to the County of Fairfax (or equivalent government body or agency), as shown on Sheets 12, 12A and 12B of the CDP, subject to the following conditions:

- i. VDOT establishes clear guidelines, per the document entitled "Transportation Design Standards for Tysons Corner," as approved by the Board of Supervisors on September 13, 2011 (and including any such amendments), to require utility companies, contractors, and other entities to restore streetscape features that are damaged or otherwise affected by construction work performed subject to a VDOT permit;
- ii. VDOT will permit all stormwater and other facilities to be constructed and maintained as shown on the CDP, subject to the Applicant accepting maintenance responsibilities for said facilities;
- iii. VDOT will permit the Applicant to continue using security bollards that are constructed within streetscape areas and shown on an approved FDP;
- iv. The Applicant shall continue to maintain the streetscape facilities as described in this Proffer 29; and
- v. Dedication of the streetscape facilities shall occur concurrently with dedication of the adjacent roadway, as specified in Proffer 36.

G. Public Access. For streetscape areas that are privately owned, the Applicant shall dedicate public access easements, in a form approved by the Office of the County Attorney, for the area of the streetscape between the Build-to Line and the street, subject to the following conditions:

- i. The Applicant may provide modified public access in the areas identified as building zones on Sheet 5 of the CDP, where sidewalk dining areas, retail browsing areas, and other related functions may be placed; and
- ii. Public access easements shall not be required on certain private streetscape areas as designated on an approved FDP.

30. Interim Conditions and Standards. Due to the size of the Proposed Development and the time anticipated for completion, phased redevelopment may result in various interim conditions on the Property. At the time of each FDP approval, the Applicant shall identify the specific proposed interim conditions both within and outside the FDP area and shall ensure such

conditions provide reasonable pedestrian connections, vehicular circulation, temporary landscaping and streetscapes, public park treatments, and screening/treatment of exposed or partially complete above-grade parking structures.

- A. If an interim condition or phase includes partial demolition of an existing structure, the FDP for that phase shall include all or a portion of the existing structure, as applicable, to ensure revisions to parking and on-site circulation for the existing structure are adequate.
- B. If interim improvements not located within the FDP area are contemplated with any FDP, such FDP shall specify how and when such improvements shall be constructed. Such interim improvements include, but are not limited, to, interim athletic fields and fieldhouses, transportation improvements, entrances to the Tysons East Metro Station, relocated security gates, and/or guardhouses.
- C. Interim conditions shall comply with the following general standards, provided that the improvements are acceptable to Fairfax County, VDOT, and all other utility companies as may be applicable:
 - i. Construction of interim sidewalks a minimum of a five (5) feet in width and installation of interim street lights along the interim sidewalks, as needed to ensure a safe, convenient pedestrian path to the Metro Station;
 - ii. Installation of street trees, with a minimum size of 2 inch caliper, approximately every 50 feet, to the extent feasible based on existing conditions and utility easements. Interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees;
 - iii. Provision of interim designs for publicly accessible open spaces shall include interim landscaping, pedestrian pathways, seating, signage and recreational facilities as determined at FDP;
 - iv. Provision of peripheral and interior parking lot landscaping in accordance with Article 13-203 of the Zoning Ordinance for interim surface parking lots, unless waived or modified at the time of FDP or site plan approval;
 - v. Application of a screening system (which may be removable) where above grade garage structures that will be interior when later phases are complete are exposed at phase lines. This screening system shall be applied to all levels above grade and shall be composed of an architecturally designed system that may reflect basic architectural lines of the permanent facades, and that shall partially obscure the garage view from outside the garage until the next phase is constructed. The specific screening system to be utilized for each building shall be determined at the time of FDP approval and graphically depicted on the FDP. Alternate temporary garage screening and the use of banners and or temporary art works as a part of the screening system may be approved with FDP approval;

- vi. Grading and seeding of areas on the Property where existing improvements are removed to accommodate a portion of the Proposed Development, and are not scheduled to commence construction within 12 months; and
- vii. Where appropriate, provision of attractive temporary construction fencing, which may include public art, signage or wayfinding elements. Signage shall be in keeping with Article 12 of the Zoning Ordinance or alternatively in accordance with an approved Comprehensive Sign Plan.

STORMWATER MANAGEMENT

31. Stormwater Management. Stormwater management measures for the Property shall be designed with the goal of protecting the downstream receiving waters in the Tysons Corner area from further degradation while providing sufficient controls to proportionately improve the condition of said receiving waters. The Applicant shall provide for stormwater detention ("SWM") and Best Management Practices ("BMP") in a system made up of several measures including green roofs, underground detention vaults, cisterns and low impact development ("LID") facilities (collectively, the "SWM Facilities"). The specific SWM Facilities shall be determined at the time of each FDP approval and subsequent site plan approval, and as may be approved by DPWES. Each FDP shall include the location and preliminary design of the SWM Facilities, including access points to underground vaults. It is understood that interim or temporary SWM and BMP measures may be required during early stages of the Proposed Development.

A SWM program for the Property was previously approved with Site Plan # 6835-SP-04 (the "Approved Site Plan"), prior to the construction of the Existing Development. The pre-development condition for the approved SWM program consisted of approximately nine buildings and associated surface parking lots and roadways. ~~The previously approved SWM program establishes the baseline condition for the Proposed Development since the Existing Development and the present infrastructure has already been implemented based on the Approved Site Plan.~~

The SWM Facilities shall be designed to provide a reduction in peak flow and volume from the peak release rates. Stormwater management plans for the Property shall at a minimum be designed to achieve the current stormwater management design credits for LEED. Additionally, the first inch of rainfall for ~~each building~~ the Property shall be captured and reused to the extent practicable ~~during final design of each building.~~

Plans shall make use of certain LID techniques that will aid in runoff volume reduction and promote reuse throughout the site. As a part of the LID techniques proposed, the Applicant shall provide green roof (intensive and/or extensive) on approximately forty (40) percent of all rooftop areas. Green roofs shall be installed in keeping with PFM specifications. The areas of rooftop covered by green roofs will contribute a 45%-60% runoff volume reduction for storms equal to or less than one inch of rainfall; as currently proposed by the Virginia Department of Conservation and Recreation. Other LID techniques may include, but shall not be limited to,

installation of tree box filters, infiltration, pervious hardscapes and/or streetscapes and stormwater reuse for landscape irrigation and mechanical/plumbing applications.

At the time of each FDP submission, the Applicant shall provide calculations showing the proposed volume reductions and shall work cooperatively with DPWES and DPZ to ensure that the first inch of rainfall is retained or reused to the maximum extent practicable.

TRANSPORTATION

32. Tysons Transportation Fund. The Applicant shall provide a contribution to Fairfax County of \$4.07 per net new non-residential square foot for the development associated with the Capital One Headquarters Expansion Phase, and a contribution of \$6.44 per square foot for all other net new non-residential development. In addition, the Applicant shall provide a contribution to Fairfax County of \$1,000.00 for each residential unit constructed on the Property. The contribution associated with each building shall be paid in a lump sum, based on the actual gross floor area of non-residential space and/or the actual number of residential units in the building, with payment to occur prior to the issuance of the first RUP or Non-RUP for each building. This contribution shall not apply to any public-use facilities constructed on the Property, including the Public Facility described in Proffer 13.

33. Special Transportation Assessment District. The Applicant will cooperate with efforts to and/or take all reasonable steps necessary to include the Property in one transportation special district, including, but not limited to, a transportation improvement district, service district, community development authority or similar entity (collectively the "Transportation District"), established by governmental action for the sole purpose of providing funds to Fairfax County for the private sector's share of the costs of future transportation improvements to serve the Tysons Corner Urban Center; provided, however, this commitment shall not require the Applicant to cooperate with or participate in a district beyond the existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District") that may be proposed for the purpose of funding Phase II or any further extension of Metrorail service to Dulles Airport or beyond. Such cooperation shall include, but shall not be limited to, supporting the creation of such Transportation District and/or signing a petition requesting such, in conjunction with other landowners, if required by applicable law, to create such Transportation District. The obligations of the Applicant under this Proffer shall only apply if the proposed Transportation District meets all of the following criteria:

- A. For any particular tax year, the rate for an ad valorem real property tax assessment or the value of any other special assessment levied by or on behalf of the Transportation District shall be set at no more than the difference between \$0.29 per \$100 of assessed value and the then current rate for the Phase I District, e.g., if in a particular tax year the rate for the Phase I District tax is \$0.22 per \$100 of assessed value, then for that tax year the rate for the Transportation District or the value of any other special assessment may not exceed \$0.07 per \$100 of assessed value, while if in another tax year the Phase I District rate is \$0.00, then for that other year the Transportation District tax rate or the value of any other special assessment may not exceed \$0.29 per \$100 of assessed value.

- B. Such Transportation District, combined with the Applicant's contribution of the Jones Branch Connector dedication described in Proffer 35 will satisfy the Applicant's share of transportation improvements contained in Table 7 of the adopted Comprehensive Plan for the Tysons Corner Urban Center.
- C. The duration of such Transportation District will expire on or before January 1, 2055.
- D. In the event the Board of Supervisors ever establishes, on its own initiative, a special tax district or general tax increase on Tysons Corner landowners for the express purpose of paying for all or a portion of the Table 7 transportation improvements, the commitments outlined in this Proffer 33 shall be extinguished.

34. Table 7 Contribution. In the event the Board of Supervisors establishes, on its own initiative, a special tax district or general tax increase on Tysons Corner landowners for the express purpose of paying for all or a portion of the Table 7 transportation improvements, the Applicant shall also contribute the sum of \$5.63 per square foot for all net new non-residential development. In addition, the Applicant shall provide a contribution of \$1,000.00 for each residential unit constructed on the Property to Fairfax County for the Tysons Transportation Fund. The contribution associated with each building shall be paid in a lump sum, based on the actual gross floor area of non-residential space and/or the actual number of residential units in the building, with payment to occur prior to the issuance of the first RUP or Non-RUP for each building. This contribution shall not apply to any public-use facilities constructed on the Property, including the Public Facility described in Proffer 13.

35. The Jones Branch Connector Project. The Applicant has designed the Proposed Development to accommodate FCDOT and VDOT plans for the future Jones Branch Connector bridge project, which will connect Scotts Crossing Road and Jones Branch Drive (the "Jones Branch Connector"). Within 60 days of a formal bid award by FCDOT or VDOT to construct the Jones Branch Connector project, the Applicant shall dedicate in fee simple at no cost to Fairfax County or the Commonwealth of Virginia a portion of the Property shown on Sheet 3 of the CDP, up to a maximum of 1.65 acres, for the construction of the Jones Branch Connector (the "Jones Branch Dedication"). The actual land area to be dedicated, which shall in no case exceed the 1.65-acre area shown on Sheet 3 of the CDP, shall be based upon the approved design plans in place for the Jones Branch Connector at the time of full construction funding, which shall depict the final amount and configuration of the dedication. The Applicant shall also dedicate any temporary construction or grading easements required for construction of the ~~JBC~~Jones Branch Connector, at no cost to the County.

- A. Gates of McLean Access Road. Sheet 15C of the CDP identifies a secondary access road for Gates of McLean residents that connects with the proposed grid of streets on the Property between the existing conference center and Building 3 (the "Secondary Access Road"). The Applicant shall construct the portion of the Secondary Access Road that is shown on the Property prior to the issuance of an RUP or Non-RUP for the first building constructed as part of the Hotel/Civic Plaza Phase. If the off-site portion of the Secondary Access Road has been permitted but not constructed, the Applicant shall construct it at the same time,

with the Secondary Access Road open to traffic prior to the issuance of an RUP or Non-RUP for the first building constructed with that phase.

- B. Interim Gates of McLean Access Road. In the event the Jones Branch Connector is constructed prior to the Hotel/Civic Plaza Phase, the Applicant shall construct a temporary connection to the Secondary Access Road on its Property, as shown on Sheet 14 of the CDP. Construction of this temporary connection is subject to construction by the Jones Branch Connector project of the off-site portion of the Secondary Access Road that connects to the temporary connection on the Property.
- C. Maintenance and Snow Removal. If permitted by VDOT or FCDOT, the Applicant shall provide appropriate maintenance and snow removal for the off-site portion of the Secondary Access Road from the time it is constructed, from the Gates of McLean property line to the Applicant's property line. If required, the Applicant shall enter into an appropriate agreement with VDOT or FCDOT to provide such maintenance and snow removal to commonly accepted industry standards.
- D. Table 7 Credit for Jones Branch Dedication. In the event the STAD is established as described in Proffer 33, the Applicant's contribution of the Jones Branch Dedication shall satisfy the Applicant's contributions to the Table 7 improvements identified in the Comprehensive Plan, with the exception of the STAD contributions. In the event the STAD is not established and the Applicant is required to make cash contributions to Table 7 improvements as described in Proffer 34, the market value of property associated with the Jones Branch Dedication (as measured at the time of zoning approval) shall be first deducted from any contributions due. Market value shall be established on a per square foot basis, using the actual square footage dedicated, using the County's assessed value of the Property for the calendar year the dedication is made.

36. Internal Grid of Streets and Road Improvements. The Applicant shall construct the internal grid of streets for the Property in phases, as outlined in the Phasing Plan. The internal grid of streets shall consist of the streets identified on the CDP as Capital One Drive, Old Meadow Road, and Old Springhouse Road. The internal grid shall also include the on-site portion of the Gates of McLean Access Road.

- A. Public Streets and Streetscapes. The Applicant shall dedicate right-of-way for Old Meadow Road, portions of Capital One Drive and portions of Old Springhouse Road (the "Public Streets"), to a point inclusive of the landscape amenity panel and sidewalk as shown on Sheets 14 and 15 of the CDP. The Public Streets shall be designed and constructed to be generally consistent with the document entitled "Transportation Design Standards for Tysons Corner," as approved by the Board of Supervisors on September 13, 2011 (and including any subsequent amendments) or to such standard as may be approved on the FDP. The Applicant shall work diligently with VDOT and the County during the FDP and site plan approval processes to ensure that the improvements proposed to the

Public Streets and the area of the landscape amenity panel/sidewalk can be accepted into the VDOT system for maintenance. As may be necessary with respect to all of the Public Streets, the Applicant shall dedicate and convey to the Board in fee simple right-of-way, as applicable, including the area of the landscape amenity panel/sidewalk, at the time of site plan approval, with the following exceptions:

- i. If, at the time of site plan approval, it is determined that parking garages, stormwater management facilities, utility vaults or other similar facilities proposed to be located beneath or within the landscape amenity panel/sidewalk prevent VDOT and/or the County from accepting the landscape amenity panel/sidewalk as part of the public right-of-way, only right-of-way measuring eighteen (18) inches from the proposed face of curb line shall be dedicated to the County in fee simple and a public sidewalk and utility easement in a form acceptable to the County Attorney, over the area of the amenity panel/sidewalk shall be granted to the County. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDP or any subsequent FDP, as determined at the time of site plan.
- ii. If, at the time of site plan approval, it is unclear whether parking garages, stormwater management facilities, utility vaults or other similar facilities proposed to be located beneath or within the landscape amenity panel/sidewalk will be acceptable to VDOT and/or the County, only right-of-way measuring eighteen (18) inches from the proposed face of curb line shall be dedicated to the County in fee simple and right-of-way for potential future dedication of the landscape amenity panel and sidewalk areas shall be reserved. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated in fee simple. Conveyance of the amenity panel/sidewalk areas to the Board shall occur following construction of the street and streetscape improvements and final street acceptance inspection by the County and/or VDOT subject to the stipulations in these Proffers.
- iii. Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or the County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and a public sidewalk and utility easement, in a form acceptable to the County Attorney, shall be granted in its place. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within

any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDP or any subsequent FDP, as determined at the time of site plan.

- B. Public Street Standards. All Public Streets proposed herein shall be subject to VDOT approval and be in general conformance with the standards included in Attachment C (Transportation Design Standards for Tysons Corner Urban Center) of the Memorandum of Agreement approved by the Board of Supervisors on September 14, 2011, as may be amended (the "MOA").
- C. Private Streets and Streetscapes. Portions of Capital One Drive and Old Springhouse Road, and the associated streetscapes for each street (the "Private Streets"), as shown on Sheets 14 and 15 of the CDP, shall remain privately owned and maintained, and shall be designed and constructed to be generally consistent with the CDP. The Applicant shall maintain in good repair and replace, as needed, the paving and other elements associated with the Private Streets. The Private Streets shall be constructed and maintained to the standards contained in the PFM.
- D. Timing of Dedications. The Public Streets shall be dedicated consistent with the phasing schedule on Sheets 14 and 15 of the CDP. Each Public Street shall be accepted into the State system prior to bond release for the applicable phase. Until and unless each Public Street is accepted into a public maintenance system, it shall be considered a Private Street and the Applicant shall dedicate and record a temporary public access easement in a form acceptable to the Office of the County Attorney over all affected street and sidewalk areas until such time as the right-of-way is accepted into public maintenance as outlined in this Proffer 36. The Applicant shall not be required to dedicate temporary public access easements for any Private Streets that are within secure areas, as designated on an approved FDP. Nothing in this Proffer shall prevent the Applicant from constructing or dedicating any portion of the Public Streets in advance of the required time shown on the CDP, provided the Public Street is shown on an approved FDP and subject to acceptance by VDOT or an equivalent government agency.
- E. Security. The Applicant may be permitted to maintain or relocate the security guardhouses and gates that are located on the Private Streets within the Property as part of the Existing Development, subject to an approved FDP clearly delineating the locations of these facilities. The Applicant may also install security walls and bollards, subject to FDP approval. Minor modifications shall be permitted to these security facilities periodically to permit the Applicant to respond to new or different security threats, subject to approval by the Zoning Administrator.
- F. Definition of "Construct." For the purposes of this Proffer, the term "construct" shall mean that the committed road improvement is open for use by the public for travel, whether or not the improvement has been accepted for public maintenance.

G. Street Names. The Applicant reserves the right to provide different names for the streets than shown on the CDP.

H. Joint Maintenance and Reciprocal Easement Agreements. Prior to or concurrent with the establishment of the UOA, the Applicant shall prepare and record reciprocal easements, joint maintenance agreements, or other covenants to provide for the ongoing maintenance of the private portions of the internal grid of streets.

37. Traffic Signal. The Applicant shall install a traffic signal at the intersection of Capital One Drive and Old Meadow Road prior to the first RUP or Non-RUP for the final building of the Hotel/Civic Plaza Phase. The Applicant shall provide VDOT with the requisite traffic signal plans for review and approval. All right-of-way associated with signal equipment (poles, equipment, boxes, etc.) located on the Property that is not already dedicated shall be subject to traffic signal easements permitting maintenance by VDOT and the County, as applicable. If the County, upon request of the Applicant or on its own initiative, determines that the signal installation as proffered will be detrimental to traffic operations, the Zoning Administrator may (1) agree to a later date for completion of the traffic signal installation or (2) permit the Applicant to proceed without the signal installation.

38. Improvements to Route 123. Concurrent with the first FDP submission following the Capital One Headquarters Expansion Phase, the Applicant shall submit plans for a raised median on the northbound lanes of Dolley Madison Boulevard between the travel lanes and the dual left turn lanes for the purpose of restricting left turn movements for vehicles exiting the Capital Beltway onto northbound Dolley Madison Boulevard. If approved by VDOT, the Applicant shall construct the improvement prior to the issuance of an RUP or Non-RUP for the first building associated with the relevant phase. The Zoning Administrator may elect to delay or waive this improvement in the event VDOT withholds timely approval for this improvement despite diligence on the part of the Applicant, or if there are construction delays despite the Applicant's best efforts.

39. Old Meadow Road Safety Improvements. Prior to FDP approval for any development phase that includes Building 10 and/or Building 11, the Applicant shall submit to FCDOT for review and approval a plan proposing safety improvements for the portion of Old Meadow Road between Old Springhouse Road and Dolley Madison Boulevard. The safety improvements shall include a median and channelization of the loading entrances that front Old Meadow Road. If approved by FCDOT, with concurrence by VDOT and the Fire Marshal, the Applicant shall construct the approved safety improvements prior to issuance of the first Non-RUP for the relevant phase.

40. Congestion Management Plans.

A. The Applicant shall prepare and implement a construction congestion management plan during construction of each phase, as appropriate, through its development/construction manager and the Transportation Coordinator (as defined in Proffer 41), so as to provide safe and efficient pedestrian and vehicle

circulation at all times on the Property and on the public roadways adjoining the Property (each a "Congestion Management Plan").

- B. Each Congestion Management Plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane closures, and/or other construction related activities to minimize disturbance on the surrounding road network.
- C. Each Congestion Management Plan shall also require the Applicant to coordinate its construction activities throughout construction with VDOT, FCDOT, the Dulles Rail Project Entities and the entities constructing the HOT lanes project, and to monitor the off-site transit and roadway improvements (including, but not limited to, the Dulles Rail, the Capital Beltway and HOT Lanes projects) and adjust the Applicant's Congestion Management Plans accordingly.
- D. Such Congestion Management Plans shall be prepared by a qualified professional and submitted for review and comment to the Providence District Supervisor and the Providence District Planning Commissioner, FCDOT and DPWES upon submission of the initial site plan for each phase. In addition, the Transportation Coordinator shall coordinate any adjustments to the TDM Plan (as defined in Proffer 41) as necessary to address each Congestion Management Plan.

TRANSPORTATION DEMAND MANAGEMENT

41. Transportation Demand Management. The Applicant shall fund, implement, and administer a TDM program as described in this Proffer and as further outlined in the "Capital One TDM Plan" prepared by UrbanTrans Consultants, Inc. dated June 13, 2012, which is attached hereto and made a part of these Proffers as Exhibit B (the "TDM Implementation Plan"). Modifications, revisions and supplements to the TDM Implementation Plan, including the Transportation Demand Management Work Plan ("TDMWP") may be approved by FCDOT and can be made without the need for a PCA.

The Applicant or any successor, including the UOA, shall remain obligated under this Proffer until such time as two consecutive post stabilization trip generation analyses reveal that the applicable trip reduction objectives are being met (the "Applicant Control Period"). For purposes of this Proffer, stabilization shall be defined to occur upon the later of one year following issuance of the last initial RUP for a dwelling unit to be constructed in the Proposed Development or one year following issuance of the last Non-RUP for floor area representing 80% of full occupancy of the final non-residential building to be constructed in the Proposed Development ("Stabilization").

If, subsequent to the approval of the Proposed Development, a Tysons-wide TDM entity is established for the purpose of administering TDM programs in the Tysons Corner Urban Center, then the Applicant, with approval from FCDOT, and without requiring a PCA, may join or otherwise become associated with such entity and transfer all functions of this TDM program to the new entity whereupon this Proffer shall be void and of no further force or effect.

- A. Objective. The objective of this TDM program shall be to reduce the vehicle trips generated by the office and residential uses within the Proposed Development during weekday peak hours by meeting the percentage trip reduction goals set forth in Table 12 of the Implementation Plan and as further refined below. The percentage trip reduction goals shall apply to the number of dwelling units and new office space proposed and reflected on any FDPs submitted for the Property. The Applicant or the UOA, as applicable, shall meet the vehicle trip reduction targets noted below. The trip reduction targets become applicable upon the development reaching the "Initial Development," which is defined as the year following issuance of the first RUP or Non-RUP for the first new building constructed on the Property. Vehicle trip reduction targets are set as follows:

Year	0 to 1/8 Mile from Station	1/8 to 1/4 Mile from Station
2010 – 2020	45%	35%
84 million SF of GFA (2030)	55%	45%
96 million SF of GFA (2040)	60%	50%
113 million SF of GFA (2050)	65%	55%

If through an amendment to the Comprehensive Plan, the Board of Supervisors should subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly. In this event, no PCA will be required.

A TDM penalty fund, as described in Section 3.6 of the Implementation Plan, will be posted by the Applicant to ensure continued efforts of the TDM Program to meet the proffered goals. The TDM Penalty Fund is either a letter of credit or cash escrow established through an account into which the Applicant will deposit penalty payments as may be required to be paid pursuant to the TDM Proffer for non-attainment of trip reduction goals.

If, upon Stabilization of the Proposed Development, the percentage trip reduction goals are not being met, remedies and penalties will be enforced. During the period prior to Stabilization, if the percentage trip reduction goals are not being met, remedies only will be applied. Following the Applicant Control Period (ACP), if the percentage trip reduction goals are not being met, then only remedies will be applied against the Applicant or the UOA, as applicable.

- B. The Applicant or the UOA, as applicable, shall verify that the proffered trip reduction objectives are being met through the provision of person surveys, traffic counts and/or other such methods as may be reviewed and approved by FCDOT. The procedures for implementation of the surveys and traffic counts and the timing for the surveys and traffic counts are defined in Section 5 of the Implementation Plan. FCDOT may postpone surveys and traffic counts due to levels of occupancy or other outside factors. In the event that survey and traffic

count data conflict, traffic count data will be utilized to verify compliance with the proffered trip reduction objectives.

- C. The Applicant or the UOA, as applicable, will summarize the results of the TDM Program annually on February 15th for FCDOT as outlined in Section 5.1 of the Implementation Plan. Should the Applicant or UOA fail to provide a TDM Program summary on or before February 15th of each year the county may charge the Applicant or UOA a fine of \$100 per day until the day upon which the TDM Program Summary is submitted to FCDOT.
- D. If the applicable trip reduction goal is not met in any year following Initial Development for any building on the property, then the Applicant shall coordinate with FCDOT to address and implement such remedial measures as may be developed in accordance with the Implementation Plan and annual TDM Work Plan. In addition, funds for remedial TDM measures will be drawn from the TDM Remedy Fund at the following rate for each building exceeding trip reduction goals:

Exceeded Trip Goals	PenaltyRemedy
1% to 3%	1% of Remedy Fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

At no point shall the amount of penalties assessed exceed the amount of funds available in the Remedy Fund

- E. If any building within the development achieves its trip reduction goals for five consecutive years, any Remedy Funds that were deposited in association with that building and still remaining after any previously assessed penalties shall be returned to the Applicant. All remaining Remedy Funds shall be returned to the Applicant at the end of the Applicant Control Period.
- F. If after the second remedial evaluation cycle during the Applicant Control Period and upon Stabilization of the Proposed Development, the Applicant has not met the applicable TDM trip reduction goal for the Property, the Applicant shall be assessed a penalty according to the following scale:

Exceeded Trip Goals	Penalty
1% to 3%	5% of Penalty Fund
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

At no point shall the amount of penalties assessed exceed the amount of funds deposited into the Penalty Fund as outlined in Item I.

- G. At the conclusion of the Applicant Control Period all funds remaining in the Penalty Fund shall be returned to the Applicant.
- H. The Applicant shall contribute the sum of forty cents (\$0.40) per square foot for commercial space and thirty cents (\$0.30) per square foot for residential space toward the Remedy Fund. Funds will be contributed on a pro rata basis upon issuance of the first RUP or Non-RUP for each new office or residential building.
- I. The Applicant shall contribute the sum of ten cents (\$0.10) per square foot for commercial space and five cents (\$0.05) per square foot for residential space toward the Penalty Fund. Funds will be contributed on a building-by-building basis upon issuance of the first RUP or Non-RUP for each new office or residential building.
- J. The Applicant shall contribute the sum of ten cents (\$0.10) per square foot for commercial space and five cents (\$0.05) per square foot for residential space toward the TMA Start-up Fund, based on the maximum approved GFA. The Applicant shall contribute the funds as follows:
- i. ~~A sum equal to one half of the total TMA contribution with the issuance of the first RUP or Non-RUP for the first new building on the Property~~
 - ii. ~~The remaining funds shall be contributed in equal installments with the issuance of the first RUP or Non-RUP for the next four buildings on the Property.~~

<u>First New Building</u>	<u>\$190,000</u>
<u>Second New Building</u>	<u>25% of the remaining funds due</u>
<u>Third New Building</u>	<u>25% of the remaining funds due</u>
<u>Fourth New Building</u>	<u>25% of the remaining funds due</u>
<u>Fifth New Building</u>	<u>25% of the remaining funds due</u>

The Applicant shall contribute the sum of two cents (\$0.02) per square foot for commercial and residential space toward the Incentive Fund. Funds will be allocated on a building-by-building basis upon issuance of the first RUP or Non-RUP for each new office or residential building. All funds remaining in the Incentive Fund at the end of the Applicant Control Period shall be returned to the Applicant.

42. Intelligent Transportation Systems. To optimize safe and efficient travel in Tysons, the Applicant shall incorporate and maintain a system that provides pertinent traffic and transit information that allows users to make informed travel decisions. This information shall be provided at initial occupancy of each building. The delivery of this information shall be made convenient for building occupants and visitors, such as via computer, cell phone, monitors, or similar technology. Such devices shall provide, but not be limited to, information on the following:

- A. Traffic conditions, road hazards, construction work zones, and road detours.
- B. Arrival times and delays on Metrorail, Tysons Circulator, and area bus routes.
- C. Real-time parking conditions and guidance to current on-site parking vacancies.
- D. Bus stops pre-wired for real-time arrival/departures information.

The Applicant shall work with FCDOT and/or the Tysons Partnership to identify sources and facilitate electronic transmittal of data. Furthermore, the Applicant shall participate in efforts to implement any future dynamic traffic management program for the Tysons area.

PEDESTRIAN AND BICYCLE IMPROVEMENTS

43. Bicycle Facilities. The Applicant shall provide and maintain bicycle racks, bicycle lockers, and bicycle storage areas throughout the Property, with the specific location and number of facilities to be determined at the time of FDP approval for each phase. The total number of storage spaces provided shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking, and shall be shown on each FDP. The Applicant shall construct a multi-modal bicycle hub, which may contain such amenities as a bicycle station and facilities for bicycle sharing. Details on the multi-model bicycle hub will be provided with the FDP for the Metro Station Phase, and the hub will be fully constructed and operational prior to the issuance of the first RUP or Non-RUP for the final building within that phase.

44. Pedestrian Crosswalks and Signals. If approved by FCDOT and VDOT, the Applicant will install pedestrian countdown signals at intersections within the internal grid of streets described in Proffer 36. The Applicant will also install crosswalks across Route 123 at the intersection with Old Meadow Road, on both sides of the intersection, provided VDOT approves adding the crosswalks at these locations, and provided any such improvement only requires alterations to the intersection striping, and does not require any alterations or improvements to the intersection geometry or the traffic signals.

PUBLIC TRANSPORTATION

45. Bus Shelters. If requested by Fairfax County, the Applicant shall construct a bus shelter in the streetscape along Old Springhouse Road prior to issuance of the first RUP for the Residential Commons Phase. The design of such bus shelter shall be coordinated with Fairfax County such that it is compatible with a Tysons-wide bus shelter strategy, and shall make provisions for electrical conduit for the purpose of providing real-time bus arrival information. In addition, the Applicant shall provide all reasonable construction and grading easements at no cost to the County, as determined by FCDOT.

46. Metrorail Station-Related Facilities.

- A. At-Grade Pedestrian Connection. Prior to the issuance of the first Non-RUP for the hotel associated with the Capital One Headquarters Expansion Phase, an at-grade pedestrian connection (the "At-Grade Connection") shall be constructed as generally shown on Sheet 27A of the CDP. The design for the At-Grade

Connection shall be further refined in the site plan for the Capital One Headquarters Expansion Phase. Should the cost estimate furnished by WMATA to construct the At-Grade Connection exceed \$250,000, the Applicant shall notify DPZ in writing and, if requested, discuss potential changes in the scope or design details to reduce the costs and/or determine whether Fairfax County is willing to contribute the funds necessary to complete the improvement. If no agreement can be reached with WMATA and Fairfax County within six months from the time DPZ is notified, the Applicant may elect at any time after that date to contribute to Fairfax County the sum of \$250,000 in lieu of constructing the At-Grade Connection, upon written assurances that the contribution will be used only for the At-Grade Connection described in this Proffer.

- B. Fees for Connections. The At-Grade Connection is envisioned to provide public benefits and will serve several neighboring land bays in addition to the Property. In the event WMATA, Fairfax County, or the Metropolitan Washington Airports Authority ("MWAA") changes its existing policy and charges the Applicant a fee for the purpose of providing or maintaining any connection to the Metro Station, the Applicant shall be released from all responsibility for constructing the At-Grade Connection, as described in this Proffer 46, and shall instead proceed with the notification and contribution process described in Proffer 46(A) above.
- C. Disapproval by WMATA. If The Applicant shall pursue the At-Grade Connection in good faith. Nonetheless, if WMATA disapproves the Applicant's plans for the At-Grade Connection despite such good faith, the Applicant shall be released from all responsibility for constructing the At-Grade Connection, as described in this Proffer 46.
- D. Unavoidable Delay. For the purposes of this Proffer 46, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required improvement has been delayed (such as the inability to secure necessary permission from WMATA, despite the Applicant's best efforts) beyond the required times set forth in this Proffer, the Zoning Administrator may agree to a later date for dedication/completion of the improvement.

PARKS AND RECREATIONAL FACILITIES

47. Publicly Accessible Parks and Recreational Facilities. Consistent with the Phasing Plans on Sheets 14 – 15 of the CDP, the Applicant shall provide park spaces and recreational facilities on the Property that will be open and accessible to the general public. For areas that are not specifically dedicated to the Fairfax County Park Authority ("FCPA") for park purposes, the Applicant shall retain the area(s) in fee simple, record public access easement(s) ensuring that the park space is open to the public for periods of times consistent with traditional Fairfax County parks subject to usual and customary rules and regulations, and provide for perpetual private maintenance. The Applicant shall also enter into an agreement with FCPA to plan and coordinate activities and events within the publicly accessible park areas. Prior to recording any deed restrictions on the Property that would restrict the use of the publicly accessible park areas,

the Applicant shall submit such deed restriction to the County Attorney for review and approval. A wayfinding and signage system shall be developed in coordination with FCPA, subject to approval as a Comprehensive Sign Plan ("CSP"), and shall be installed by the Applicant as approved to ensure the public can easily identify and access all publicly accessible park spaces. Construction of these publicly accessible parks and recreational facilities shall occur as set forth in this Proffer 47. Publicly accessible parks and facilities shall be provided as generally shown on Sheets 25 – 28 of the CDP and in accordance with the Capital One Design Guidelines, with more specific details provided at the time of FDP approval. Additional or substitute recreational facilities to those listed below may be approved with the FDP provided such facilities result in an equivalent or enhanced quality of recreational opportunities.

- A. Capital One Headquarters Expansion Phase. An urban pocket park of approximately 0.05 acres will be constructed between the existing conference center and Building 1 prior to the first RUP or Non-RUP for the final building associated with this phase, as generally shown on Sheet 28 of the CDP.
- B. Hotel/Civic Plaza Phase. Prior to the issuance of the first RUP or Non-RUP for Building 4, a civic plaza of approximately 0.63 acres will be constructed for the space adjacent to Buildings 3, 4, and 5 in the Hotel/Civic Plaza Phase, as generally shown on Sheet 25 of the CDP. Additional phasing details will be provided on the FDP for this phase.
 - i. Traffic Limitations. The civic plaza shall remain closed to motorized vehicular traffic, except that emergency and maintenance vehicles shall be permitted limited access through removable barriers or some other means of access for emergency and maintenance operations.
- C. Residential Commons Phase.
 - i. Common Green. Prior to the issuance of the first RUP for the final building associated with this phase, a common green shall be installed of approximately 1.55 acres, and will contain passive recreation areas for residents and guests. The common green shall also encompass an active recreation area with a recreational field and a playground, as generally shown on Sheet 26 of the CDP and as further described in Proffer 50 below. Additional phasing details will be provided on the FDP for this phase.
 - ii. Pocket Park. Prior to the issuance of the first RUP for the final building associated with this phase, the Applicant shall construct three pocket parks totaling approximately 0.33 acres using primarily softscape features, including shade trees. The features and treatment of these pocket parks is generally shown on Sheet 28 of the CDP. Additional phasing details will be provided on the FDP for this phase.
- D. Metro Station Phase Urban Park. Prior to the issuance of the first RUP or Non-RUP for the final building associated with this phase, the Applicant shall install a

park of approximately 1.66 acres for use as both an urban park and as a stream valley park. The park shall combine water features, a gently sloping hardscape area and walkways to encourage visitors to explore the more natural areas around the Scotts Run Stream Valley, and shall be constructed as generally shown on Sheets 27 and 27A of the CDP. Additional phasing details will be provided on the FDP for this phase.

- E. Financial Office Phase. Prior to the issuance of the first RUP or Non-RUP for the final building associated with this phase, two pocket parks shall be constructed containing approximately 0.63 acres, and shall be located between the two office buildings associated with this phase. The features and treatment of pocket parks is generally shown on Sheet 28 of the CDP. Additional phasing details will be provided on the FDP for this phase.

48. Private Amenities and Recreational Facilities for Residential Uses. The Applicant shall provide on-site recreational facilities for the future residents of the Property. Pursuant to Par. 2 of Section 6-110 of the Zoning Ordinance, the Applicant shall expend a minimum of \$1,700.00 per market-rate and workforce residential unit on such recreational facilities. Prior to final bond release for the final phase of the Proposed Development, the balance of any funds not expended on-site, as determined by DPWES, shall be contributed to the FCPA for the provision of recreational facilities serving Tysons Corner.

At the time of each FDP submission, the Applicant shall propose specific facilities and amenities that will be provided for each residential building, or shared between two or more buildings for the use and enjoyment of the residents of the building/buildings. Amenities to be provided may include but shall not be limited to:

- A. Private exterior recreational areas or courtyards on the upper level of parking podiums with seating areas, specialty landscaping, lawn and/or shaded areas and hardscape areas, volleyball courts, pickleball courts, putting greens, bocci courts, boules courts, board table games, or similar recreational facilities as may be approved with each FDP.
- B. Private exterior recreational areas on the roof or podium level with a swimming pool, lounge deck, and shade structure.
- C. Interior fitness center, a minimum of 1,000 square feet in size, furnished with exercise equipment such as stationary bicycles, treadmills, weight machines, free weights, and other equipment, but not necessarily staffed.
- D. A club room and/or entertainment center for resident gatherings.

49. Fitness Facilities. The Applicant shall provide fitness facilities that include a sport court or sport courts, by choosing one of the two alternatives below:

- A. Health Club Alternative. The Applicant may include a health club or gym containing up to 60,000 square feet of GFA. If provided, the health club would include at least one full-size basketball court and one full-size tennis court, and

shall be open for use by residents of the Proposed Development and the general public through a paid membership or paid use arrangement. This facility would be intended to serve the needs of leagues and individuals.

- B. Sport Court Alternative. The Applicant may include two half-court basketball courts and one tennis court (or equivalent sport courts or facilities as determined at the time of FDP approval, or as subsequently determined by the Zoning Administrator) as part of the private recreational amenities for residents. Should this option be implemented, the cost to build the sport courts may be counted toward the minimum recreational expenditures described in Proffer 48.

50. On-site Recreational Field. Prior to issuance of the first RUP for the last building in the Residential Commons Phase, the Applicant shall provide a synthetic turf recreational field (the "Recreational Field") as shown within the Common Green on Sheet 26 of the CDP. Additional phasing details will be provided with the FDP for the Residential Commons Phase. The Recreational Field shall be provided subject to the following conditions:

- A. Lighting. The Applicant shall provide lights for the Recreational Field and shall ensure the lights are available until at least 10:00 pm nightly. At its sole option, the Applicant may employ electronic devices designed to reduce or eliminate the lights during times when the field is not in use.
- B. Scheduling. The Applicant shall permit Fairfax County to schedule use of the Recreational Field. The Recreational Field will be available for scheduled use by the general public between the hours of 5:00 pm and 10:00 pm from Monday through Friday, and between the hours of 8:00 am and 12:00 noon on Saturdays and Sundays. During all other times, scheduled use of the Recreational Field shall only be open to for residents or members of the UOA. Nothing in this Proffer shall be construed to limit public access to the Recreational Field during times when it has not been scheduled through the process described herein.
- C. Preferential Scheduling. Fairfax County shall provide preferred scheduling for residents and members of the UOA during those times when the general public may use the Recreational Field.
- D. Maintenance. The Applicant shall be responsible for maintenance and typical life cycle replacement costs for all elements of the Recreational Field. Public access to the Recreational Field may be limited for a reasonable duration during maintenance and/or replacement of facilities.
- E. Parking. The Applicant shall ensure that all users of the Recreational Field are able to utilize parking facilities on the Property, as necessary.
- F. Field Markings. Recreational Field users shall be permitted to utilize temporary marking and/or striping equipment including but not limited to goals, cones, and flags. Additional details will be established in the written agreement in Proffer 50(G) below.

- EG. Agreement. Prior to the time the Recreational Field is established, the Applicant and Fairfax County shall enter into an agreement, consistent with this Proffer, to formalize the details of scheduling, maintenance, and liability insurance.

GREEN BUILDING PRACTICES

51. Green Building Certifications. For each office or hotel building, the Applicant shall provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of, at a minimum, "LEED Silver" certification (or equivalent) by the U.S. Green Building Council's Leadership in Energy and Environmental Design – New Construction ("LEED") prior to bond release for each respective phase. Each residential building shall attain, at a minimum, "LEED Certified" or equivalent. In addition:

- A. The Applicant shall include a U.S. Green Building Council Leadership in Energy and Environmental Design ("LEED") accredited professional as a member of the design team for each office building. The LEED accredited professional shall work with the team to incorporate LEED design elements into the project so that each non-residential building will be positioned to attain LEED Silver certification. At the time of site plan submission, the Applicant shall provide documentation to the Environment and Development Review Branch of the Department of Planning and Zoning ("DPZ") demonstrating compliance with the commitment to engage such a professional.
- B. The Applicant shall include, as part of the site plan submission and building plan submission for each building, a list prepared by the LEED accredited professional of specific credits that the Applicant anticipates attaining within the LEED rating system determined to be applicable to the project. The LEED accredited professional shall provide certification statements at both the time of site plan review and the time of building plan review indicating that the items on the list should meet at least the minimum number of credits necessary to position each building to attain the proffered level of LEED certification.
- C. Prior to issuance of the first Non-RUP or RUP for each building, the Applicant shall provide to the Environment and Development Review Branch of DPZ a letter from the LEED accredited professional certifying that a green building maintenance reference manual has been prepared for use by future building occupants, that this manual has been written by a LEED accredited professional, that copies of this manual shall be provided to all future building occupants and that this manual, at a minimum:
 - i. Provides a narrative description of each green building component, including a description of the environmental benefits of that component and including information regarding the importance of maintenance and operation in retaining the attributes of a green building.
 - ii. Provides, where applicable, product manufacturer's manuals or other instructions regarding operations and maintenance needs for each green

building component, including operational practices that can enhance energy and water conservation.

- iii. Provides, as applicable, either or both of the following:
 - a. Maintenance staff notification process for improperly functioning equipment; or
 - b. A list of local service providers that offer regularly scheduled service and maintenance contracts to assure proper performance of green building-related equipment and the structure, to include, where applicable, the HVAC system, water heating equipment, water conservation features, sealants, and caulks.
- iv. Provides contact information that building occupants can use to obtain further guidance on each green building component.
- v. Prior to issuance of the first Non-RUP for each office building, or the final RUP for each residential building the Applicant shall provide an electronic copy of the manual in PDF format to the Environment and Development Review Branch of DPZ.

D. Green Building Escrow. Prior to building permit approval, the Applicant will execute a separate agreement and post, for each building covered by this Proffer, a green building escrow, in the form of a letter of credit from an accredited financial institution, in the amount of \$2.00/square foot of GFA (the "Green Building Escrow"). The Green Building Escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED certification, by the USGBC, under the applicable version of the LEED rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to the Environment and Development Review Branch of DPZ of documentation from the USGBC that each building has attained LEED certification will be sufficient to satisfy this commitment. At the time LEED certification is demonstrated to the Environment and Development Review Branch of DPZ, the escrowed funds shall be released to the Applicant.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within three (3) years of issuance of the final RUP or Non-RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED certification, 50% of the Green Building Escrow will be released to the Applicant; the other 50% will be released to the County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant fails to provide, within three (3) years of issuance of the final RUP or Non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the building has fallen short of LEED certification by more than three (3) points, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

- E. Waiver of Escrow. As an alternative to providing a Green Building Escrow, as described in this Proffer, the Applicant may choose at its sole discretion to pursue a certification higher than LEED Silver, in which case a LEED or equivalent-accredited professional will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED Silver certification.

Prior to building plan approval for the building to be constructed, the Applicant shall submit documentation to the Environment and Development Review Branch of DPZ, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED Silver certification. Under this alternative, the Applicant is not required to provide a Green Building Escrow unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED Silver certification.

SUSTAINABLE AND SHARED ENERGY

52. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices, the Applicant shall provide the following information with each FDP submission:

- A. Shared Energy. For any FDP that includes more than one building, an assessment of the potential, within the area subject to the FDP, of shared energy systems, including but not limited to combined heat and power (CHP) (co-generation), micro-CHP, distributed energy resources, and district heating and/or cooling, and, if a shared energy strategy will not be pursued, a narrative discussion regarding the reason(s) for this outcome. For single-building FDP submissions and for other FDPs where shared energy systems will not be pursued, an assessment of

the potential for incorporation into building designs of measures that will cause these buildings to be "shared energy ready," that would permit buildings to be incorporated into a broader shared energy network in the future.

- B. Electric Vehicle Charging Infrastructure. An assessment of the feasibility and costs associated with the provision of space and infrastructure required for the future provision of electric vehicle charging stations that would become accessible to future users of parking facilities in the area subject to the respective FDP. Based on the results of this assessment, the Applicant will consider the provision of space and infrastructure to provide areas for some "electric-vehicle ready" parking spaces in the affected parking decks. "Electric-vehicle ready" means the provision of space, conduit banks, conduits and access points allowing for easy installation of vehicle charging stations in the future, but does not include the installation of transformers, switches, wiring, or charging stations.

PUBLIC SCHOOLS CONTRIBUTIONS

53. Public Schools Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$9,378 per expected student generated by each residential building (based on an assumed rate of 0.087 students per multifamily high-rise unit) to the Fairfax County School Board to be utilized for capital construction and capacity enhancements to schools in the Tysons Corner area that serve the development. The contributions shall be made on or before the issuance of the first RUP for each residential building on the Property, and shall be based on the actual number of residential units in each building. In the event fewer residential units are built than estimated at the time of payment, the overpayment amount shall be applied to the public schools contribution for future phases of the Proposed Development.

54. Notification of Construction. At the time of site plan submission for each residential building or buildings, the Applicant shall notify the facilities planning division of the Fairfax County Public Schools ("FCPS") of the approximate timing for construction of the residential units, and the number of residential units anticipated in each building.

ENVIRONMENT

55. Scotts Run Restoration. Prior to bond release for the Metro Station Phase, the Applicant shall provide stream bank restoration using “natural channel stream design concepts” to the maximum extent practicable as defined in Sec. 10.1-560 of the Code of Virginia for the portion of Scotts Run located within the Property (the “Stream Restoration”). This design shall accommodate the stream crossing and existing easements while maintaining the wetlands in that area, shall accommodate existing and expected future off-site flows within a stable channel, and shall be reviewed in accordance with Sec. 10.1-561. The conceptual design will be depicted on the first FDP for the Metro Station Phase and the Applicant shall prepare a detailed plan (the “Stream Restoration Plan”) to submit with the first site plan for the Metro Station Area. The Stream Restoration Plan shall be reviewed by DPWES if necessary, and shall be approved by the U.S. Army Corps of Engineers (“COE”) and the Virginia Department of Environmental Quality. Written documentation of COE and DEQ approval of the Stream Restoration Plan shall be provided to DPWES prior to site plan approval. Specific success criteria (the “Success Criteria”), maintenance and monitoring criteria (the “Maintenance and Monitoring Criteria”), and information regarding reports on these criteria (the “Monitoring Reports”) shall also be included in the Stream Restoration Plan.

Subject to written approval by the Providence District Supervisor, the Applicant may satisfy the Stream Restoration requirement in this Proffer 55 by electing to participate in a regional plan to restore a larger portion of Scotts Run that is promulgated by the private sector or the County.

56. Tree Preservation and Planting Fund Contribution. To promote enhancement of the Fairfax County Tree Canopy through growth of trees on private and public land, the Applicant will contribute at the time of the first site plan approval \$.002 (two tenths of a cent) per square foot of the maximum proposed GFA as stated in Proffer 6 to the Fairfax County Tree Preservation and Planting Fund “TPPF”). This donation to the TPPF will supply tree saplings, volunteer support, and information to landowners with which they can enhance tree canopy on their property. Additionally, this donation will enable educational activities in Fairfax County Public Schools, should they choose to participate.

AFFORDABLE AND WORKFORCE DWELLING UNITS

57. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Ordinance, Affordable Dwelling Units (“ADUs”) shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.

58. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to these Proffers, the Applicant shall also provide for-sale and/or rental housing units on the Property in accordance with the Board of Supervisors’ Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units (“WDUs”) shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed as part of the Proposed Development. The 20% applies to the total number of dwelling units to be constructed on the Property. If ADUs are provided in the development, both the ADUs and the

ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.

- A. WDU Specifications. ~~The WDUs generated by each residential building on the Property may be provided within said building, or may be provided in a separate residential building on the Property.~~ The WDUs generated by each residential building on the Property shall be provided within said building. However, the Applicant reserves the right to consolidate the WDUs into one or more buildings with the buildout of the Property and thereby increase the number of WDU units in one or more buildings beyond twenty percent (20%) with a corresponding decrease in the number of WDU units in the other buildings. The WDUs shall have a bedroom mix similar to that provided in the market rate units. A minimum of ten percent (10%) of the dwelling units designated as ADUs and WDUs shall be designed and constructed with Universal Design features, as determined by the Applicant. Additionally, in the event that parking spaces are assigned to individual market rate dwelling units, at least one (1) parking space shall be designated for use by each ADU and/or WDU in the development.
- B. Agreements. Notwithstanding the foregoing, should the Board's policies related to WDUs in Tysons Corner be amended, the Applicant reserves the right, at its sole discretion, to opt in to the new policies, in whole or in part, without the need for a PCA and, if the Applicant so opts into any such new policies, the provisions of this Proffer which relate to the new policies of the Board which Applicant has elected to opt into shall no longer be effective. Furthermore, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and the County and may occur after the approval of this Application. Neither the Board nor any other County agency shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications shall be recorded in the Fairfax County land records.
- C. Non-residential Affordable Housing Contribution. The Applicant shall contribute \$3.00 for each square foot of non-residential space (excluding retail and space reserved for public facilities as described in Proffer 13) built on the Property to the Fairfax County Board of Supervisors for the provision of affordable and/or workforce housing to serve Tysons. Such contribution shall be made prior to the issuance of the first Non-RUP for each non-residential building, and shall be based on the actual gross floor area of non-residential space constructed in each building. ~~This Proffer shall not apply to the Existing Development or to any public use facilities, including the Public Facility described in Proffer 13.~~

MISCELLANEOUS

59. Advance Density Credit. The Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all eligible dedications described herein, including the Jones Branch Dedication described in Proffer 35.

60. Escalation. All monetary contributions specified in these Proffers shall escalate on an annual basis from the base month of January 2013 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers [1982-84=100] (not seasonally adjusted) ("CPI-U"), both as permitted by Va. Code Ann. Section 15.2-2303.3. This Proffer 60 shall not apply to the TDM program described in Proffer 41 or the STAD Assessment described in Proffer 33.

61. Severability. Any of the phases and/or buildings may be the subject of a Proffered Condition Amendment ("PCA"), Special Exception ("SE"), Special Permit ("SP"), Conceptual Development Plan ("CDP"), Conceptual Development Plan Amendment ("CDPA"), Final Development Plan ("FDP") or Final Development Plan Amendment ("FDPA") without joinder and/or consent of the owners of the other phases or buildings, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases or buildings. Previously approved zoning applications applicable to a particular land bay that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.

62. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

63. Tysons Partnership. The Applicant and successors shall become a member in the Tysons Partnership, or its residential equivalent.

64. Security. Upon request, the Applicant will share its security surveillance recordings with Fairfax County law enforcement authorities. The Applicant will follow common channel protocols for voice, wireless, and data surveillance. The Applicant reserves the right to withhold information in the limited instances where its voluntary disclosure would jeopardize trade secrets or violate other legal protections (for instance, privacy laws, legal privileges, etc.)

65. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

66. Applicant's Diligence. Notwithstanding the foregoing, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required transportation, publicly accessible park areas, athletic field improvements, or other proffered improvements have been delayed (due to, but not limited to an inability to secure necessary permission for utility relocations and/or VDOT approval for traffic signals, necessary easements, site plan approval, etc.) beyond the time frames specified, the Zoning Administrator may agree to a later date for completion of these improvement(s).

Signatures on following pages

CAPITAL ONE BANK (USA), NATIONAL ASSOCIATION
a national banking association
Owner of Tax Map # 29-2 ((5)) A2

By: _____
Name: _____
Title: _____

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